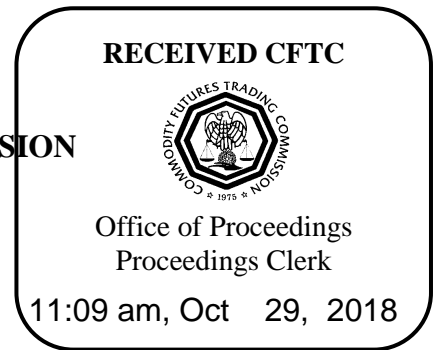


UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION



_____)
In the Matter of:)
)
JOSEPH KIM,)
)
Respondent.) **CFTC Docket No. 19-02**
)
)
_____)

ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTION 6(c) AND (d) OF THE COMMODITY EXCHANGE ACT, MAKING
FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I. INTRODUCTION

The Commodity Futures Trading Commission (“Commission” or “CFTC”) has reason to believe that from at least September 2017 through March 2018 (“Relevant Period”), Joseph Kim, (“Kim” or “Respondent”) violated Section 6(c)(1) of the Commodity Exchange Act (“Act”), 7 U.S.C. §9(1) (2012), and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2018), of the Commission Regulations (“Regulations”) promulgated thereunder. Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Respondent admits the findings and conclusions herein and consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”) and acknowledges service of this Order.¹

¹ Respondent consents to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondent does not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Respondent does not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

II. FINDINGS

The Commission finds the following:

A. SUMMARY

Between September and November of 2017, Kim misappropriated approximately 980 Litecoins and 339 Bitcoins from his employer to cover personal trading losses in his own personal virtual currency trading accounts. When questioned by his employer about the transfers, Kim concealed his misappropriation and provided false explanations for the transfers. Kim's employer suffered a loss of approximately \$601,000 as a result of Kim's scheme. After Kim's employment was terminated, he fraudulently solicited approximately \$545,000 from at least 5 individuals between December 2017 and March 2018 to continue trading virtual currencies in an ill-fated attempt to cover his previous losses. In soliciting customers, Kim made a number of false statements, including that he left his employment on his own terms and that he would invest funds in a low-risk arbitrage virtual currency strategy. Kim lost all \$545,000 of the customers' funds trading virtual currencies in his personal trading accounts.

B. RESPONDENT

Joseph Kim currently resides in Phoenix, Arizona. Kim has never been registered with the Commission in any capacity. Kim was employed as a trader at a proprietary trading firm in Chicago ("Firm") from approximately July 2016 through November 2017, when the firm terminated his employment.

C. FACTS

On or about September 1, 2017, Kim was assigned to the Firm's virtual currency group to engage in virtual currency trading. However, from September 2017 through November 2017, Kim misappropriated portions of the Firm's Bitcoin and Litecoin holdings to cover personal trading losses in his own virtual currency trading accounts. Specifically, on or about September 23, 2017, using means and instrumentalities of interstate commerce, Kim transferred approximately 980 Litecoins (valued at approximately \$48,000) from the Firm's account to his own personal account to use for his own personal benefit. When questioned by the Firm's management about the transfer, Kim falsely represented that there were security issues with a virtual currency exchange that necessitated the transfer, and he further falsely claimed that he had transferred the Litecoins to a company-owned wallet, which was a device that stored the public and private keys used to receive or transfer the virtual currency. Kim concealed from the Firm's management that he had actually misappropriated the Litecoins.

In November 2017, using means and instrumentalities of interstate commerce, Kim misappropriated an additional 339 Bitcoins (valued at approximately \$3.2 million) to cover trading losses in his personal virtual currency trading account. Through a series of transfers over several days, Kim transferred the Firm's Bitcoins back and forth between a Firm account, a Firm wallet, and his own personal trading account. When questioned by the Firm's management about these transfers, Kim falsely represented that the transfer had been unsuccessful and that the Bitcoins would be credited back to the Firm. Kim concealed that he was using the Firm's

Bitcoin to cover his own trading losses, and was also using the Firm's Bitcoin to trade his own personal account to attempt to recoup those losses.

The Firm discovered Kim's misappropriation and was able to recover some of the virtual currency from Kim's accounts. However, the Firm suffered a loss of approximately \$601,000 from Kim's scheme. It terminated Kim's employment in November 2017.

After Kim was terminated from the Firm, Kim solicited funds from certain individuals ("customers") to continue trading in virtual currency with the hope of earning sufficient trading profit to repay the Firm. Between in or about December 2017 and in or about March 2018, Kim raised approximately \$545,000 from at least 5 customers to trade in virtual currency. In his solicitations, Kim made a number of false statements and representations to obtain and retain these customer funds. First, Kim falsely told customers that he had decided to voluntarily leave the Firm to start his own trading firm, and concealed from customers that he had been fired for misappropriating the Firm's virtual currency. Second, Kim falsely told customers that he would invest their funds in an arbitrage virtual currency strategy that was lower in risk, when, in fact, Kim made high-risk, directional bets on the movement of virtual currencies that resulted in substantial losses. Third, Kim sent false account statements to customers showing that his trading of their funds was profitable, when his trading actually experienced substantial losses. As a result of Kim's scheme, Kim lost \$545,000 of the customers' funds in virtual currency trading.

On May 21, 2018, pursuant to a plea agreement, Kim pleaded guilty to one count of wire fraud in connection with the misappropriation of approximately \$601,000 (USD value) of Litecoin and Bitcoin from the Firm and fraudulent solicitation of \$545,000 in funds from investors, in violation of Title 18, United States Code, Section 1343. *USA v. Kim*, 18-CR-107 (N.D. Ill.) ECF No. 21.

III. LEGAL DISCUSSION

A. **Violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) and Regulation 180.1(a), 17 C.F.R. § 180.1(a): Deceptive Scheme, Commodity Fraud**

Section 6(c)(1) of the Act makes it unlawful for any person, directly or indirectly, to:

use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate ...

Promulgated under Section 6(c)(1) of the Act, Regulation 180.1(a) provides:

It shall be unlawful for any person, directly or indirectly, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly:

- (1) Use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud;
- (2) Make, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading;
- (3) Engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit on any person.

Virtual currencies such as Bitcoin and Litecoin are encompassed in the definition of “commodity” under Section 1a(9) of the Act, 7 U.S.C. § 1a(9) (2012). *See CFTC v. McDonnell*, 287 F. Supp. 3d 213, 228 (E.D.N.Y.) (“[V]irtual currencies can be regulated by CFTC as a commodity.”), *aff’d on reconsideration*, 321 F. Supp. 3d 366 (E.D.N.Y. 2018); *In re BFXNA Inc.*, CFTC Docket 16-19, at 5-6 (June 2, 2016) (consent order) (“[V]irtual currencies are encompassed in the [Act’s] definition and properly defined as commodities.”); *In re Coinflip, Inc.*, CFTC No. 15-29, 2015 WL 5535736, at *2 (Sept. 17, 2015) (consent order) (“bitcoin and other virtual currencies are encompassed in the definition [of Section 1a(9) of the Act] and properly defined as commodities.”); *see also CFTC v. My Big Coin Pay, Inc.*, No. CV 18-10077-RWZ, 2018 WL 4621727, at *5 (D. Mass. Sept. 26, 2018). Accordingly, Bitcoin, Litecoin and other virtual currencies are subject to applicable provisions of the Act and Commission Regulations, including Section 6(c)(1) of the Act and Regulation 180.1(a). *See, e.g., In re TeraExchange LLC*, CFTC No. 15-33, 2015 WL 5658082, at *3 n.3 (Sept. 24, 2015) (consent order) (“Further, bitcoin is a commodity under Section 1a of the Act, 7 U.S.C. § 1a (2012), and is therefore subject as a commodity to applicable provisions of the Act and Regulations.”).

The Commission has authority under Section 6(c)(1) of the Act and Regulation 180.1 to take action against persons who engage in fraud and fraudulent schemes in connection with contracts of sale of commodities in interstate commerce. *CFTC v. McDonnell*, 321 F.Supp.3d 366, 367 (E.D.N.Y. 2018) (affirming on reconsideration that “Title 7 U.S.C. § 9(1) gives the CFTC standing to exercise its enforcement power over the fraudulent schemes alleged in the complaint.”); *My Big Coin Pay.*, 2018 WL 4621727 at *5 (rejecting defense that Section 6(c)(1) of the Act and Regulation 180.1 were meant only to combat fraudulent market manipulation and not the alleged solicitation fraud). A person violates Section 6(c)(1) of the Act and Regulation 180.1 if he or she: (1) engages in prohibited conduct (i.e., employs a fraudulent scheme, makes material misrepresentations or omissions, or engages in fraudulent business practices); (2) in connection with the sale of a commodity in interstate commerce; (3) with scienter. *CFTC v. Hunter Wise Commodities, LLC*, 21 F. Supp. 3d 1317, 1347 (S.D. Fla. 2014). Each of these elements is present in this case.

Kim intentionally misappropriated Bitcoins and Litecoins from his employer and used these virtual currencies to engage in transactions from Chicago on virtual currency exchanges in California and others locations outside of Illinois. The misappropriation of funds or virtual currencies in connection with contracts of sale of commodities in interstate commerce constitutes fraud that violates 6(c)(1) of the Act and Regulation 180.1(a). *See, e.g., CFTC v. Leben*, No. 3:14-C-866-TLW, 2016 WL 7354359, at *5 (D.S.C. Aug. 5, 2016) (finding that the

misappropriation of funds and issuance of false information concerning investors' accounts violated Section 6(c)(1) of the Act and Regulation 180.1(a); *see also CFTC v. Global Precious Metals Trading Co.*, No. 1:13-cv-21708, 2013 WL 5212237, at *5 (S.D. Fla. Sept. 12, 201) (default judgment) (finding that defendant violated Section 6(c)(1) of the Act and Regulation 180.1(a)(1) by misappropriating funds, and by making misrepresentations and omissions).

Kim made misleading statements and omissions to his customers in violation of Regulation 180.1(a)(2), 17 C.F.R. § 180.1(a)(2) when he told them that he voluntarily left his job to start his own trading firm and concealed his termination, when he minimized the risks associated with the virtual currency trading he was undertaking with their funds, and when he provided them with false account statements showing that his trading of their funds was profitable, when his trading actually experienced substantial losses. A statement of fact is material if "there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision." *Saxe v. E.F. Hutton & Co.*, 789 F.2d 105, 111 (2d Cir. 1986). Any fact that enables investors to assess the risk inherent in their investment and the likelihood of profit is material. *See In re Commodities Int'l Corp.*, CFTC No. 83-43, 1997 WL 11543, at *8-9 (Jan. 14, 1997). Misrepresentations concerning profit and risk go to the heart of a customer's investment decision and are therefore material as a matter of law. *CFTC v. Int'l Fin. Servs. (N.Y.), Inc.*, 323 F. Supp. 2d 482, 501 (S.D.N.Y. 2004) (citations omitted). It also was a material misrepresentation for Kim to mischaracterize the reason for his departure from his prior job. *CFTC v. Vishnevetsky*, No. 12-cv-3234, 2014 WL 2959124 at *4 (N.D. Ill. Feb. 26, 2014) (default judgment) (it was a material omission for defendant to fail to disclose that he was involuntarily terminated from his positions with brokers). These were misleading statements and omissions of material fact, and Kim made them intentionally.

In summary, Kim engaged in a scheme to defraud his employer and at least five customers in connection with contracts of sale of the virtual currencies Bitcoin and Litecoin in interstate commerce. As a part of this scheme, Kim made false and misleading representations to his employer, and concealed material information as he disguised the purpose of transfers of these virtual currencies into and out of his own personal trading accounts. Kim also made misleading statements and omissions of material fact to at least five individuals as he solicited and received their funds for the purpose of trading virtual currencies. Kim then provided false account statements reflecting profits where there were actually massive losses. Kim made these misrepresentations, omissions and false statements intentionally.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Kim violated section 6c(1) of the Act, 7 U.S.C. § 9(1) (2012), and Regulations 180.1(a), 17 C.F.R. § 180.1(a) (2018).

V. OFFER OF SETTLEMENT

Respondent has submitted an Offer in which he, admits and agrees with the findings and conclusions herein:

A. Acknowledges service of this Order;

- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waives:
1. The filing and service of a complaint and notice of hearing;
 2. A hearing;
 3. All post-hearing procedures;
 4. Judicial review by any court;
 5. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 6. Any and all claims that he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012), and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2018), relating to, or arising from, this proceeding;
 7. Any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-53, tit. II, 110 Stat. 847, 857-74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.) , relating to, or arising from, this action;
 8. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, including this Order;
- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondents has consented in the Offer;
- E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. Makes findings by the Commission that Respondent is liable for violating 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), and Regulation 180.1(a), 17 C.F.R. §180.1(a) (2018),
 2. Orders Respondent to cease and desist from violating Section 6(c)(1) of the Act and Regulation 180.1(a);
 3. Orders Respondent to pay restitution in the amount of One Million One Hundred Forty-Six Thousand (\$1,146,000) ("Restitution Obligation"), plus post-judgment interest. Kim is currently the defendant in the above-referenced Criminal Action charging him for the misconduct that is at issue in this matter. Kim will receive a dollar-for-dollar credit against the Restitution Obligation for payments made in

satisfaction of any restitution ordered by the United States District Court in the Criminal Action (*United States of America v. Joseph Kim*, No. 18 CR 107 (N.D. Ill.)).

4. Orders that Respondent be permanently prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012)), and all registered entities shall refuse him trading privileges; and
5. Orders Respondent and his successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order.

Upon consideration, the Commission has determined to accept the Offer.

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2018).
- B. Respondent shall pay restitution in the amount of One Million One Hundred Forty-Six Thousand (\$1,146,000) plus post-judgment interest (“Restitution Obligation”). If the Restitution Obligation is not paid immediately, then post-judgment interest shall accrue on the Restitution Obligation beginning on the date of entry of the Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of the Order pursuant to 28 U.S.C. § 1961 (2012).

To effect payment of the Restitution Obligation by Respondent and the distribution of restitution to Respondent’s customers, the Commission appoints the National Futures Association (NFA) as “Monitor.” The Monitor shall receive payments of the Restitution Obligation and any post-judgment interest from Respondent and make distributions as set forth below. Because the Monitor is not being specially compensated for these services, and these services are outside the normal duties of the Monitor, it shall not be liable for any action or inaction arising from its appointment as Monitor other than actions involving fraud.

Respondent is currently the defendant in a criminal action charging him for the misconduct that is at issue in this matter. *USA v. Kim*, No. 18-CR-107 (N.D. Ill.) (the “Criminal Action”). For amounts paid in satisfaction of any restitution ordered in the Criminal Action, Kim shall receive a dollar-for-dollar credit against the Restitution Obligation. Respondent shall provide the Monitor with proof of any payments made in satisfaction of restitution ordered in the Criminal Action by sending a cover letter with the name and docket number of this proceeding, and a copy of the form of payment, to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606.

For payments towards the Restitution Obligation in excess of the restitution obligation ordered in the Criminal Action, Respondent shall make his payments of the Restitution Obligation and any post-judgment interest under the Order in the name of the “Joseph Kim’s Settlement Fund” and shall send such payments by electronic funds transfer, or U.S. postal money order, certified check, bank cashier’s check, or bank money order to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606, under a cover letter that identifies Respondent and the name and docket number of this proceeding. Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

The Monitor shall oversee Respondent’s Restitution Obligation and shall have the discretion to determine the manner of distribution of funds in an equitable fashion to the Respondent’s customers, or may defer distribution until such time as the Monitor may deem appropriate. In the event that the amount of payments of the Restitution Obligation to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a restitution distribution is impractical, those *de minimis* amounts shall constitute disgorgement and the Monitor may, in its discretion, treat such restitution payments as payments of disgorgement to be paid to the U.S. Treasury. To the extent any funds accrue to the U.S. Treasury for satisfaction of Respondent’s Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth in the Order.

- C. Respondent is permanently prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012)), and all registered entities shall refuse him trading privileges; and
- D. Respondent shall comply with the following conditions and undertakings set forth in the Offer:
 - 1. Public Statements: Respondent agrees that neither he nor any agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent’s: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent shall comply with this agreement, and shall undertake all steps necessary to ensure that all agents and/or employees under his authority or control understand and comply with this agreement.
 - 2. Respondent agrees that he shall never, directly or indirectly:
 - a. enter into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2018)), or virtual currencies, for

Respondent's own personal accounts or for any accounts in which Respondent has a direct or indirect interest;

- b. have any commodity interests traded, or virtual currency transactions conducted, on Respondent's behalf;
 - c. control or direct the trading, or conducting transactions, for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interest or virtual currencies;
 - d. solicit, receive, or accept any funds from any person for the purpose of purchasing or selling any commodity interests or virtual currencies;
 - e. apply for registration or claim exemption from registration with the Commission in any capacity, and engage in any activity requiring such registration or exemption from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2018); and/or
 - f. act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2018)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012)), registered, required to be registered, or exempted from registration with the Commission except as provided for in Regulation 4.14(a)(9).
3. Cooperation with Monitor: Respondent shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Respondent's victims, whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any restitution payments. Respondent shall execute any documents necessary to release funds that he has in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.
4. Cooperation, in General: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, in this action, and in any current or future Commission investigation or action related thereto. Respondent shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, this action.
5. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission or the Monitor of any partial payment of Respondent's Restitution Obligation shall not be deemed a waiver of his obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
6. Change of Address/Phone: Until such time as Respondent satisfies in full his Restitution Obligation as set forth in this Order, Respondent shall provide written

notice to the Commission by certified mail of any change to their telephone numbers and mailing addresses within ten (10) calendar days of the change.

The provisions of this Order shall be effective as of this date.

By the Commission.



Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: October 29, 2018